United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7554

United States Court of Appeals For the Second Circuit

ELSIE M. HAVANICH,

Appellant,

vs.

SAFECO INSURANCE COMPANY OF AMERICA,

Appellee.

On Appeal From The United States District Court For The District of Connecticut At Waterbury

JOINT APPENDIX

UNITED STATES COURT OF APPEALS
FILED
JAN 3 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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PAGINATION AS IN ORIGINAL COPY

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date: 2/23/73 by Plaintiff

D. C. Form No. 106 Rev. U. S. Court of Appeals #76-7554

TITLE OF CASE	ATTORNEYS
ELSIE M. HAVANICH v. SAFECO INSURANCE COMPANY OF AMERICA	For plaintiff: A. Reynolds Gordon 855 Main Street Bridgeport, Conn. For defendant: Arnold J. Bai Stephen W. Leermakers ~~Goldstein and Peck~~ ~~955 Main Street~~ ~~Bridgeport, Ct., 06604~~ Bai, Pollock and Dunnigan 10 Middle Street Bpt., Ct. 06604

STATISTICAL RECORD	COSTS			DATE 1973	NAME OR RECEIPT NO.	REC.
J.S. 5 mailed	Clerk			2/23	A. Reynolds Gordon	$15.00
				2/28	Deposit, G.F.100869	
J.S. 6 mailed	Marshal			1974		
				1975		
Basis of Action: Action to ~~recover from insurance carrier of plaintiff's decedent under "uninsured motorist" provision of policy.~~	Docket fee			1976		
				10/28	Atty. Gordon APPEAL	$5.00
	Witness fees			11/12	Deposit G.F.100869	
Action arose at: $15,000	Depositions					

DATE 73	PROCEEDINGS	Date Of Judgment
	COMPLAINT, filed. Demand for Trial by Jury.	
26	Summons issued and together with copies of same and of Complaint, ~~forwarded~~ to Marshal for service. (Also, Check for $5.00 to order of Insurance ~~Commissioner~~.)	
8	Marshal's Return Showing Service, Filed. (Complaint).	
3/14	Appearance of Arnold J. Bai, Esq., and Stephen W. Leermakers, Esq., entered for Defendant.	
3/14	Notice of Deposition of James P. Ostrowski on 4/20/73 at 10:30 a.m. at offices of Atty. Gordon, 855 Main St., Bpt. Ct., filed.	
3/14	Notice of Deposition of Brownie Blazak on 4/20/73 at 10:45 a.m. at offices of Atty. Gordon, 855 Main St., Bpt., Ct., filed.	
3/14	Notice of deposition of Joe Santillo on 4/20/73 at 11:00 a.m. at offices of Atty. Gordon, 855 Main St., Bpt., Ct., filed.	
3/14	Request for Production Pursuant to FR 34, filed. (and Notice)	
3/19	Plaintiff's Interrogatories Under Rule 33, filed.	
3/19	Plaintiff's Request For Production Pursuant To F.R. 34, filed.	
3/21	Stipulation for Enlargement of Time to Plead (until and including March 30, 1973,) Entered between parties. So Ordered. Markowski, C. Copies to counsel.	
3/21	Notice of Deposition of ELSIE M. HAVANICH at 2:00 p.m., and SIGMUND MILLER at 2:30 p.m., on May 7, 1973 at office of A. Reynolds Gordon, 855 Main St., Bpt., Ct., filed.	
3/30	ANSWER and Special Defenses, filed by Defendant.	
4/5	Objection to Request for Production, filed by defendant.	
4/6	Notice of Motion (of Defendant's Objection to Request for Production), filed by Plaintiff.	
5/14	Notice of Deposition of Plaintiff Elsie M. Havanich at 2:00 p.m. and Sigmund Miller at 2:30 pm., May 21, 1973, at office of A. Reynolds Gordon, 855 Main St., Bpt., Ct., filed.	
6/20	Deposition of Brownie Blazak, filed.	
6/20	Deposition of Elsie Havanich, filed.	
6/28	Notice of Deposition of Allen Morrison, Jr., on 8/7/73 at 2:00 p.m. at office of A. Gordon, Esq., filed by plaintiff.	
8/3	Placed on Trial List.	
8/6	Deposition of James P. Ostrowski, filed.	
8/6	Deposition of Sigmund L. Miller, filed.	

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Judg
1973		
8/8	Deposition of Elsie M. Havanich, filed.	
10/9	Deposition of Allen Morrison, taken on behalf of the plaintiff, filed.	
11/30	Deposition of Joe Santillo, filed.	
1974		
1975		
2/14	Plaintiff's List of Witnesses, filed.	
2/14	Plaintiff's Proposed Exhibits, filed.	
2/14	Request For Completion Of Production, filed by plaintiff.	
2/14	Request For Admissions, filed by plaintiff.	
2/14	Pre-Trial Memorandum, filed by defendant, Safeco Insurance Co. of America.	
2/14	PRETRIAL REPORT, filed and entered. Counsel are to prepare and exchange memoranda of law and to file same with the Court by Feb. 28, 1975, etc. Case to be ready for trial on or after Apr. 20, 1975. (Date of Conference: Feb. 14, 1975.) M-2/14/75. Levet, Richard H., Sitting by Designation. Copies to Counsel of record, Levet, J., M. O'Connell.	
2/28	Plaintiff's Motion For Permission To Amend (complaint), filed.	
2/28	Plaintiff's Pretrial Memorandum Of Law, filed.	
2/28	Defendant's Memorandum of Law, filed.	
3/5	Plaintiff's Memorandum Of Law In Support Of Motion To Amend (complaint), filed.	
3/11	Plaintiff's Affidavit In Support Of Motion To Amend, filed.	
3/12	Objection To Plaintiff's Request For Completion Of Production, filed.	
3/13	Defendant's Compliance with Request for Admissions, filed.	
4/7	Memorandum and Order, filed and entered. Plaintiff's motion to amend complaint is denied. Defendant's maximum limit of liability to plaintiff is $20,000. Levet, R. H., U.S.D.C., Sitting by Designation. M-4/8/75. Copies to Attorneys Bai, Leermakers and Gordon. Also to TEC, MJB, RCZ, JON, AHL, U. Conn. Law Review. (and R.H.L.)	
9/4	Jury Assignment List of Murphy, J., Sitting by Desig., Waterbury - Off.	
1976		
9/20	CALL OF JURY TRIAL LIST: Ready. Jury selection on Sept.21,1976. To continue on Oct.1,1976. MURPHY,J., Sitting by Designation.	
9/21	JURY TRIAL COMMENCES: Jury of 6 impanelled and sworn. Trial to continue on October 1, 1976. MURPHY,J., Sitting by Designation. (Ellsworth,DC/ Beecher,R.)	
9/27	Plaintiff's Motion For Permission To Amend, filed.	
10/1	JURY TRIAL CONTINUES: Hearing held on Pltf.'s Motion To Amend - DECISION RESERVED. Defendant's Memo of Law, filed. Pltf.'s Request To Charge, filed. Pltf.'s oral motion For Request For Completion of Production, heard--DENIED OVER	

DATE 1976	PROCEEDINGS	D Jud
10/1 (cont'd)	Pltf.'s oral Motion To Limit--DENIED. Jury of 6 present. Three (3) Pltf. witnesses sworn and testified. Pltf. Exs. 1 to 10, 12, 14, filed; 11, 13, 15 and 16, marked for Ident. Deft.Ex.A. filed. Jury excused from courtroom 11:45 a.m. until 1:00 p.m. Pltf. makes offer of proof. Court recess 11:50 to 1:05 pm. Pltf.Exs. 17 to 20, marked for Ident. Jury returns to courtroom at 1:25 p.m. Previous witness resumes stand. Witness Miller, whose testimony was interrupted, resumes stand for continued direct examination. One (1) pltf. witness sworn and testified. Pltf. Exs. 21, marked for Ident.; 22 to 28, filed; 29 to 31, marked for Ident. Court recess 2:57 to 3:04 p.m. Jury returns to Courtroom at 3:06 p.m. One (1) Pltf. witness sworn and testified. Jury excused from courtroom at 3:20 p.m. One juror excused. Counsel agree to proceed with 5 jurors. Pltf. makes Offer of Proof. Jury of 5 returns to courtroom at 3:25 p.m. Pltf. rests at 3:27 p.m. Court recess 3:27 to 3:37 p.m. Portions of Deposition of Brownie Blazak read into record by Atty.Bal. for deft. Deft. rests at 3:45 p.m. All parties rest at 3:45 p.m. Court recess 3:45 to 3:47. Jury excused until Tuesday, Oct.5,1976, 10:00 a.m. Deft. orally moves for Directed Verdict--DECISION RESERVED. Court adjourned at 4:03 p.m. until Tues.,Oct.5,1976, 10:00 a.m. MURPHY,J. (Beecher,R; Ellsworth,DC)	
10/5	Defendant's Memorandum Of Law, filed.	
10/5	Defendant's Request To Charge, filed.	
10/5	JURY TRIAL CONTINUES: Pltf. requests further arguments on motions--DENIED. Court rules on Deft.'s Motion For Directed Verdict--GRANTED. Clerk is directed to enter Judgment for the deft. dismissing complaint on the merits. Pltf.'s Motion to Amend is moot. Court adjourned at 10:15 a.m. After adjournment, Pltf. puts statement on record. Deft. responds. (Jury of 5 present and excused by Court prior to entering courtroom) MURPHY,J. (Beecher,R.; Ellsworth,D.C.)	
10/6	Judgment, entered. Complaint dismissed on merits in favor of deft. MARKOWSKI,M. M-10/6/76. Copies to counsel.	
10/28	Plaintiff's Notice of Appeal from Order directing verdict and judgment entered in favor of the Deft. and from Order dismissing action, filed. Copies to counsel.	
10/28	Plaintiff's Surety Bond for Costs on Appeal ($250.00) filed. (Sur	Atty.
10/29	Civil Appeals Management Plan and Forms C and D forwarded to Atty. Gordon.	
10/29	Certified copies of Notice of Appeal* and Docket Entries mailed Clerk, U. S. Court of Appeals. *along with cert. copy of Surety Bond for Costs on Appeal.	
11/4	Acknowledgment of receipt of copies of Notice of Appeal, etc. received from Clerk, U. S. Court of Appeals.	
11/16	Transcript of Testimony of Sigmund Miller and Motion for Directe Verdict before Murphy, J. at Waterbury on October 1 and 5, 1976, filed at Bpt. (Beecher, R.)	
11/24	Copy of Civil Appeal Scheduling Order, filed. (Record due on or before Dec. 3, 1976)	

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ELSIE M. HAVANICH	:	CIVIL B-720
VS.	:	U. S. Court of Appeals Docket No. 76-7554
SAFECO INSURANCE COMPANY OF AMERICA	:	

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ELSIE M. HAVANICH	:	CIVIL B-720
VS.	:	U. S. Court of Appeals Docket No. 76-7554
SAFECO INSURANCE COMPANY OF AMERICA	:	

LIST OF EXHIBITS

	Exhibit No.
PLAINTIFF'S EXHIBITS	
Certificate of Appointment of Administrator	1
Certificate of Death	2
Copy of Safeco Insurance Company Insurance Policy	3
Copy of letter dated March 2, 1971 from Sigmund L. Miller, Esq. to Safeco Insurance Company of America	4
Copy of letter dated March 9, 1971 from Sigmund L. Miller, Esq. to Safeco Insurance Company of America	5
Letter dated March 9, 1971 from Joseph J. Santillo of Safeco Insurance Company to Sigmund L. Miller, Esq.	6
Copy of letter dated March 2, 1971 from Sigmund L. Miller, Esq. to Natalina Introini	7
Letter dated March 17, 1971 from Natalina Introini to Sigmund L. Miller, Esq.	8
Copy of letter dated March 25, 1971 from Sigmund L. Miller, Esq. to Mr. Joseph J. Santillo of Safeco Insurance Company	9

List of Exhibits (Continued)

	Exhibit No.
Copy of letter dated July 1, 1971 from Sigmund L. Miller, Esq. to Mr. B. Paul Russo, Jr.	10
Copy of letter dated July 16, 1971 from Sigmund L. Miller, Esq. to Safeco Insurance Company of America	12
Letter dated August 3, 1971 from Joseph J. Santillo of Safeco Insurance Company to Sigmund L. Miller, Esq.	14
Copy of letter dated September 13, 1971 from James P. Ostrowski to State of Connecticut, Insurance Department	22
Letter dated December 7, 1971 from Joseph J. Santillo to Sigmund L. Miller, Esq.	23
Letter dated January 18, 1972 from Joseph J. Santillo to Sigmund L. Miller, Esq.	24
Letter dated September 15, 1971 from B. Paul Russo, Jr. to Sigmund L. Miller, Esq.	25
Copy of Claims Memo dated March 10, 1971 from J. Santillo to C. Wise	26
Copy of Claims Memo dated April 7, 1971 from J. Santillo to C. Wise	27
Copy of Claims Memo dated July 29, 1971 from John Fellers to J. Santillo	28

DEFENDANT'S EXHIBIT

Copy of Release	A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

ELSIE M. HAVANICH, Plaintiff	:	
v.	:	February 21, 1973
SAFECO INSURANCE COMPANY OF AMERICA, Defendant	:	CIVIL ACTION NO. _____
	:	

COMPLAINT

1. The Defendant, SAFECO INSURANCE COMPANY OF AMERICA, is a corporation organized and existing under the laws of the State of Washington, having its home office in the City of Seattle, in the State of Washington, and authorized to do business and doing insurance business in the State of Connecticut, with offices in the Town of Fairfield, in the County of Fairfield.

2. The Plaintiff, ELSIE M. HAVANICH, who is a resident and citizen of the State of Connecticut, was and is the duly appointed Administratrix of the Estate of Carol Ann Havanich, late of said Town of Fairfield.

3. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand ($10,000.00) Dollars.

REYNOLDS GORDON
ATTORNEY AT LAW
889 MAIN STREET
BRIDGEPORT CONN

4. Carol Ann Havanich was an insured under a certain policy of insurance #N247864 issued for a premium by the Defendant, SAFECO INSURANCE COMPANY OF AMERICA to Louis J. Havanich, which policy provided Family Protection against Uninsured Motorists, coverage in the amount of Twenty Thousand ($20,000.00) Dollars per person.

5. On February 19, 1971, said Carol Ann Havanich was killed in an automobile accident which occurred in the Town of Franklin, Massachusetts, which accident was caused by the negligence of an uninsured motorist, one Joseph DeCesare of Franklin, Massachusetts.

6. Having only $5,000 liability insurance coverage, said Joseph DeCesare was an "uninsured motorist" within the meaning of the applicable statutes, regulations and policy provisions.

7. The amount which the Plaintiff would be entitled to recover against Joseph DeCesare would be at least Twenty Thousand ($20,000.00) Dollars.

8. Said policy of insurance was in full force and effect at the time of said accident and at the time of death and the Plaintiff has performed all of the conditions and obligations on her part to be fulfilled under the terms of said policy.

REYNOLDS CORDON
ATTORNEY AT LAW
855 MAIN STREET
BRIDGEPORT, CONN.

9. The Plaintiff has recovered from the Defendant, JOSEPH DeCESARE, the sum of Five Thousand ($5,000.00) Dollars, being the full liability limits on the Massachusetts insurance policy issued to JOSEPH DeCESARE.

10. The Plaintiff has recovered from the insurance carrier for JOSEPH DeCESARE an additional Two Thousand ($2,000.00) Dollars, said payment not being under the liability provisions of said policy and not being in reduction of the liability of the Defendant, JOSEPH DeCESARE.

11. The Defendant, SAFECO INSURANCE COMPANY OF AMERICA, owes to the Plaintiff the sum of Fifteen Thousand ($15,000.00) Dollars, being Twenty Thousand ($20,000.00) Dollars Uninsured Motorist Coverage less Five Thousand ($5,000.00) Dollars recovered from the Massachusetts policy, plus interest and attorney's fees.

12. Said policy of insurance issued to Louis J. Havanich provides for arbitration upon demand by either party. The Plaintiff is ready, willing and able to arbitrate the amount of the damages and any questions as to liability, but the Defendant insurance company denies coverage and refuses arbitration.

REYNOLDS GORDON
ATTORNEY AT LAW
855 MAIN STREET
BRIDGEPORT CONN

13. Despite due demand, the Defendant carrier refuses to pay the sums owing under said policy, refuses to negotiate the amount of damages, and refuses to arbitrate with respect to the liability of the Uninsured Motorist and the amount of damages.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays:

1. FIFTEEN THOUSAND ($15,000.00) DOLLARS DAMAGES, together with interest and reasonable attorney's fees.

2. An order directing the Defendant to proceed with arbitration as required by said policy.

3. A declaratory judgment determining the rights of the parties with regard to the Plaintiff's claim for uninsured motorists coverage.

Please take notice that the Plaintiff claims a trial by jury.

The Plaintiff requests that this file be assigned to the United States District Court at Bridgeport for a trial and for all preliminary proceedings.

Dated at Bridgeport, Connecticut, this 21st day of February, A.D., 1973.

THE PLAINTIFF

BY /s/ A. REYNOLDS GORDON

A. REYNOLDS GORDON
855 Main Street
Bridgeport, Connecticut 06603
ATTORNEY FOR PLAINTIFF

REYNOLDS GORDON
ATTORNEY AT LAW
855 MAIN STREET
BRIDGEPORT, CONN

Please enter the following appearance for the Plaintiff:
A. Reynolds Gordon
855 Main Street
Bridgeport, Connecticut 06603

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ELSIE M. HAVANICH, Plaintiff	)	
vs.	)	CIVIL ACTION No. B 720
SAFECO INSURANCE COMPANY OF AMERICA, Defendant	)	

ANSWER AND SPECIAL DEFENSES

BY WAY OF ANSWER:

1. Paragraph 1 is admitted.

2. So much of Paragraph 2 as alleges that the plaintiff is a resident and citizen of the State of Connecticut is admitted. As to the remaining allegations of said Paragraph 2, the defendant has no knowledge or information sufficient to form a belief and, therefore, leaves the plaintiff to her proof.

3. Paragraph 3 is denied.

4. Paragraph 4 is denied and reference is made to the terms and conditions of said insurance policy referred to therein.

5. So much of Paragraph 5 as alleges that on February 19, 1971, said Carol Ann Havanich died in an automobile accident which occurred in the Town of Franklin, Massachusetts, is admitted. All the remaining allegations of said Paragraph 5 are denied.

6. Paragraphs 6, 7 and 8 are denied.

7. So much of Paragraph 9 as alleges that the plaintiff has recovered from Joseph DeCesare the sum of Five Thousand ($5,000.00) Dollars is admitted. As to the remaining allegations of said Paragraph 9, the defendant has no knowledge or information sufficient to form a belief and, therefore, leaves the plaintiff to her proof.

8. So much of Paragraph 10 as alleges that the plaintiff has recovered an additional Two Thousand ($2,000.00) Dollars is admitted. All the remaining allegations of said Paragraph 10 are denied.

9. Paragraphs 11, 12 and 13 are denied.

BY WAY OF SPECIAL DEFENSE:

FIRST SPECIAL DEFENSE:

1. Said insurance policy issued by the defendant included so-called uninsured motorists coverage.

2. Said policy provides that (subject to the provisions and limitations thereof) the defendant shall be obligated "to pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured automobile ...".

3. The plaintiff has unconditionally released the alleged uninsured party and, therefore, would not be legally entitled to recover damages from him.

4. The defendant, therefore, is not obligated to the plaintiff under the terms of said insurance policy.

SECOND SPECIAL DEFENSE:

1. Said insurance policy contains the following exclusion:

> "This policy does not apply under this section --- (b) to bodily injury to an insured with respect to which such insured, his legal representative or any person entitled to payment under this section shall, without written consent of SAFECO, make any settlement with any person or organization who may be legally liable therefor."

2. The plaintiff and/or her agents have concluded a settlement with the alleged uninsured party without written consent of the defendant, and the plaintiff has executed an unconditional release in favor of said alleged uninsured party.

THIRD SPECIAL DEFENSE:

1. Said insurance policy issued by the defendant provided coverage (subject to the terms and limitations of said policy) for the named insured, Louis J. Havanich, and any "relative".

2. The word "relative" is defined for purposes of said insurance policy as "a relative of the named insured who is a resident of the same household".

3. The decedent Carol Ann Havanich was a resident of Franklin, Massachusetts, at the time of her death and was not a resident of the household of the named insured.

4. The decedent, therefore, does not qualify as an insured under the terms of said insurance policy issued by the defendant.

FOURTH SPECIAL DEFENSE:

The plaintiff has breached the terms and conditions of said insurance policy by (a) failing to cooperate with the defendant, and (b) by independently negotiating a settlement and accepting payment from the alleged uninsured party and/or his insurance carrier, and (c) by executing an unconditional release in favor of said alleged uninsured party, and (d) by

destroying the subrogation and indemnification rights of said defendant against the alleged uninsured party and/or his insurance carrier, and (e) by failing to give prompt notice of claim and/or suit.

FIFTH SPECIAL DEFENSE:

1. Said insurance policy contains the following provision:

> "Any amount payable under the terms of this section because of bodily injury sustained in an accident by a person who is an insured under this section shall be reduced by (1) all sums paid on account of such bodily injury by or on behalf of (i) the owner or operator of the uninsured automobile and (ii) any other person or organization jointly or severally liable together with such owner or operator for such bodily injury ..."

2. The plaintiff has previously received payments amounting to Seven Thousand ($7,000.00) Dollars from the alleged uninsured party or from his insurance carrier upon his behalf.

3. The plaintiff has also made claim for benefits under the so-called medical payments coverage of the insurance policy issued by the defendant.

4. All of the above constitute a credit against any sums allegedly due to the plaintiff as alleged in her complaint.

Dated at Bridgeport, Connecticut, this 29th day of March, 1973.

Arnold J. Bai
Goldstein and Peck
955 Main Street
Bridgeport, Connecticut

Attorney for the Defendant

This is to certify that a copy of the foregoing document was sent this day, via United States Mail, postage prepaid, to:

A. Reynolds Gordon, Esquire
855 Main Street
Bridgeport, Connecticut

Dated at Bridgeport, Connecticut, this 29th day of March, 1973.

Arnold J. Bai

5 THE COURT: All right. Well, I won't
6 hear any more arguments now. Thank you. I am
7 satisfied that the defendant's motion for a
8 directed verdict in its favor should be granted.
9 There was no dispute that the plaintiff executed
10 the general release in favor of Joseph DeCesare,
11 the operator of the vehicle in which Carol Ann
12 Havanich was a passenger at the time of her death.
13 Consideration was $4000 which was paid by the
14 Fireman's Fund Insurance Company on behalf of
15 Joseph DeCesare. Such a settlement forecloses
16 the plaintiff and the defendant from any suit
17 each would have against DeCesare and is also in
18 direct violation of the terms of the policy
19 which prohibits settlement without the written
20 consent of the defendant, which was not obtained.
21 Accordingly, the Clerk is directed
22 to enter judgment for the defendant, dismissing
23 the complaint on the merits. This disposition
24 makes mute the motion to amend the complaint by
25 adding an allegation to the effect that the

BEST COPY AVAILABLE

defendant's insurance policy was for uninsured motorist coverage in the sum of $40,000 for two vehicles; also, the issue whether the decedant was a relative as defined in thepolicy and also the prayer to order arbitration.

file

MICROFILM
OCT 6 1976
BRIDGEPORT

FILED
OCT 6 2 37 PM '76
CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ELSIE M. HAVANICH	:	
	:	
v.	:	CIVIL #B-720
	:	
SAFECO INSURANCE COMPANY OF AMERICA	:	

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Thomas F. Murphy, Senior United States District Judge, Sitting by Designation, presiding, and the plaintif having rested its case and the defendant having moved for a directed verdict, and the motion having been granted by the Court,

It is ORDERED and ADJUDGED that the action be dismissed on the merits in favor of the defendant.

Dated at Bridgeport, Connecticut, this 6th day of October, 1976.

SYLVESTER A. MARKOWSKI, Clerk

By: Lura G. Elizabeth
Deputy Clerk

LAW OFFICES
SIGMUND L. MILLER, PEOPLE'S SAVINGS BANK BUILDING • BRIDGEPORT, CONN. 06603 • (203) 334-0191
P.C.

March 2, 1971

Safeco Insurance Company of America
P. O. Box 1097
Fairfield, Connecticut

Attention: Brownie Blazak, Supervisor

Dear Mr. Blazak:

re: Policy Number N 247864
Louis J. Havenich, 487
Stillson Road, Fairfield

Pursuant to our telephone conversation of February 25th, kindly be advised that I represent the Estate of Carol Ann Havanich, daughter of your assured, who was fatally injured on February 19, 1971, while a passenger in an automobile operated by Joseph DeCesare, 71 Arlington Street, Franklin, Massachusetts.

Although my investigation is incomplete, it is my present understanding that Mr. DeCesare has the minimum assigned risk coverage of $5,000 without medical payment features.

EXHIBIT 4
CASE NO. B-70 TYPE CIVIL
FULL EXHIBIT ☑
OCT 1 1976
FOR IDENTIFICATION ☐
U.S. DISTRICT COURT
DISTRICT OF CONN.

F.C.B.O. MAR 4 - 1971

LAW OFFICES
SIGMUND L. MILLER, P.C.

Safeco Insurance Company
re: Policy Number N 247864
Louis J. Havenich

March 2, 1971
Page 2

As a result, claim will undoubtedly be made under the above policy for the bills incurred as a result of this fatality. These will be sent to you as received.

Many thanks for your courtesy and co-operation in this matter.

Sincerely yours,

Sigmund L. Miller

jis

cc Morrison & Turk Agency
783 Kings Highway
Fairfield 06430

24a

F.C.D.C. MAR 4 - 1971

Pltf 6
CASE NO. 67-72 Civil
FULL EXHIBIT
OCT 1 1970
FOR IDENTIFICATION
U. S. DISTRICT COURT
DISTRICT OF CONN.

JSURANCE COMPANIES
JRNPIKE, FAIRFIELD, CONNECTICUT 06430 – TELEPHONE (203) 336-3518

March 9, 1971

Attorney Sigmund Miller
People's Savings Bank Building
Bridgeport, Connecticut 06603

Insured: Louis J. Havenich
Policy No: N 247864
Date of Loss: 2/19/71

Dear Mr. Miller:

I am in receipt of your letter dated March 2, 1971. Would you kindly send to me all bills incurred on this claim for our consideration, and further, would you obtain for me a signed affidavit or proof of the existing insurance coverage on the automobile owned by Mr. DeCesare.

Thank you.

Very truly yours,

Joseph J. Santillo

Joseph J. Santillo
Claims Department
Fairfield Service Office

JJS:lh

CASE NO. 6-70 CIVIL
FULL EXHIBIT ☑
OCT 1 1976
FOR IDENTIFICATION ☐
U.S. DISTRICT COURT
DISTRICT OF CONN.

TELEPHONE
MILFORD 473-2635

NATALINA E. INTROINI
ATTORNEY AT LAW
38 MAIN STREET
FRANKLIN, MASS. 02038

19 SHORT STREET
MILFORD, MASSACHUSETTS 01757

March 17, 1971

Sigmund L. Miller, Esq.
People's Savings Bank Building
Bridgeport, Connecticut 06603

Dear Mr. Miller:

Pursuant to your request, a photocopy of your recent letter relative to the Estate of Carol Ann Havanich has been forwarded to Fireman's Fund American Insurance Companies at 1 Center Plaza, Boston.

Mr. DeCesare holds Policy No. AR-1-8237009, the limits of liability being $5/10.

Trusting that this information will be helpful to you, I am

Very truly yours,

NEI/m

BEST COPY AVAILABLE

Pltf 9
CASE NO. 8-720 CIVIL
FULL EXHIBIT
OCT 1 1976
FOR IDENTIFICATION
U.S. DISTRICT COURT
DISTRICT OF CONN.

EOPLE'S SAVINGS BANK BUILDING • BRIDGEPORT, CONN. 06603 • (203) 334-0191

March 25, 1971

Mr. Joseph J. Santillo
Claims Department
Safeco Insurance Companies
1088 Black Rock Turnpike
Fairfield, Connecticut 06430

Dear Mr. Santillo:

Insured:	Louis J. Havenich
Policy No:	N 247864
Date of Loss:	February 19, 1971

This acknowledges receipt of your letter of March 9th on the above entitled matter.

Enclosed please find self-explanatory copy of letter of March 9th sent to Brownie Blazak, Supervisor, enclosing funeral bill, another copy of which is enclosed herewith.

Enclosed, also, please find copy of letter dated March 17, 1971, from Natalina E. Introini of Franklin, Massachusetts, the attorney for Mr. DeCesare. You will note that she claims that he is the holder of Fireman's Fund policy number AR-1-8237009, the limits of liability being $5,000-$10,000.

I trust that this will complete the matter of the medical payment of the funeral bill. Kindly advise.

Sincerely,

Sigmund L. Miller

jis/encs.
cc Mr. Brownie Blazak

27a

EXHIBIT 10
CASE NO. 76-70 Civil
FULL EXHIBIT ☑
OCT 1 1976
FOR IDENTIFICATION ☐
U. S. DISTRICT COURT
DISTRICT OF CONN.

July 1, 1971

Mr. B. Paul Russo, Jr.
Casualty Claim Supervisor
Fireman's Fund American Insurance Co.
One Center Plaza
Boston, Massachusetts 02108

Dear Mr. Russo:

re: B 620 A 47 07 35
Assd: Joseph A. DeCesare
Clmt: Carol Ann Havanich
D/A: February 19, 1971

Pursuant to your letter of June 25th, enclosed please find the following:

1. General Release executed by Elsie Margaret Havanich, Administratrix in consideration of $5,000

Agreement for Judgment

3. Writ

4. Declaration

5. Answer

, P.C.

Mr. B. Paul Russo, Jr.
re: Estate of Carol Ann Havanich
vs: Joseph A. DeCesare

July 1, 1971

Page 2

Pursuant to your letter, I shall expect your draft within the next few days.

Very truly yours,

Sigmund L. Miller

jis/enc.

29a

LAW OFFICES
SIGMUND L. MILLER, P.C. PEOPLE'S SAVINGS BANK BUILDING • BRIDGEPORT, CONN. 06603 • (203) 334-0191

PLA
CASE NO. B 720 TYPE CIVIL
FULL EXHIBIT ☐
OCT 1 1976
FOR IDENTIFICATION ☐
U.S. DISTRICT COURT
DISTRICT OF CONN.

July 16, 1971

Safeco Insurance Company of America
1080 Black Rock Turnpike
Fairfield, Connecticut

Gentlemen:

re: Policy No. 247864 - Louis J. Havanich
487 Stillson Road, Fairfield, Connecticut

As you know, I represent the Estate of Carol Ann Havanich, daughter of your assured. Your file will indicate that Miss Havanich, while domiciled with her father at the above address, and attending college in Massachusetts, was fatally injured while a passenger in an automobile operated by Joseph A. DeCesare, a minor, of 71 Arlington Street, Franklin, Massachusetts. As you know, this accident occurred in Franklin on February 19, 1971. Mr. DeCesare was insured by Fireman's Fund American Insurance Companies, 1 Center Plaza, Boston, Massachusetts, in the amount of $5,000 per person, $10,000 over-all limit per accident and the policy limit of $5,000 has been paid to the Estate by Fireman's Fund.

Request is hereby made for $15,000, being the difference between the maximum insurance coverage of $5,000 under the DeCesare policy and the $20,000 uninsured motorists provision of the above policy, the statutes of the State of Connecticut and the regulations of the Insurance Commissioner.

If you desire any further information regarding the question of liability or damages, please do not hesitate to contact me. I would appreciate hearing from you within the next few days regarding your intentions in this matter, particularly since, earlier this year, you disclaimed any liability under the uninsured motorists clause of the above policy.

Very truly yours,

Sigmund L. Miller

jis

F.C.B.O. JUL 19 1971

Pltf EXHIBIT 14
CASE NO. B-720 TYPE Civil
FULL EXHIBIT
OCT 1 1976
FOR ADMINISTRATION
CLERK, U.S. DIST. COURT
DISTRICT OF CONN.

ISURANCE COMPANIES

ROCK TURNPIKE, P.O. BOX 1097, FAIRFIELD, CONN. 06430 – TEL. (203) 336-3518

August 3, 1971

Attorney Sigmund Miller
People's Bank Building
Bridgeport, Connecticut 06603

Insured: Louis J. Havanich
Policy: N 247864
Date of Loss: 2/19/71

Dear Mr. Miller:

In reply to your July 16, 1971 letter, please be advised that since Mr. DeCesare's automobile was insured, and coverage provided and paid for by the Fireman's Fund American Insurance Companies, we cannot have an uninsured motorist claim on Mr. Havanich's policy as the circumstances do not satisfy the requirements for an uninsured motorist claim.

Very truly yours,

Joseph J. Santillo
lh

Joseph J. Santillo
Fairfield Service Office
Claims
lh

OCT 1 1976
FOR IDENTIFICATION ☐
U.S. DISTRICT COURT
DISTRICT OF CONN.

State of Connecticut
Insurance Department
P. O. Box 816
State Office Building
Hartford, Connecticut 06115

Attention Jean M. Shea, Senior Examiner
Licenses and Claims

Insured: Louis J. Havenich
Policy: N 247864
Date of Loss: 2/19/71

Dear Miss Shea:

Per your letter of September 7, 1971, this is to confirm the company position that we are providing coverage under the uninsured motorist endorsement of our insured's policy on the above loss.

I hope this letter satisfies your request.

Very truly yours,

James P. Ostrowski
Fairfield Service Office
Claims
lh

PLF
CASE NO. 6-72-Civil
PLAINTIFF
OCT 1 1976
FOR IDENTIFICATION
U.S. DISTRICT COURT
DISTRICT OF CONN.

SURANCE COMPANIES
ROCK TURNPIKE, P.O. BOX 1097, FAIRFIELD, CONN. 06430 – TEL. (203) 336-3518

January 18, 1972

Attorney Sigmund L. Miller
855 Main Street
Bridgeport, Connecticut 06603

Insured: Louis J. Havenich
Policy No: N 247864
Date of Loss: 2/19/71

Dear Mr. Miller:

We are in receipt of your most recent letter of January 11, 1972.

At this time I must advise you that our investigation is now complete. Our policy in this matter obligates us to pay to the insured that which he is legally entitled to. Our insured is not legally entitled to any more money in this matter due to the fact that a release was taken from the Fireman's Fund Insurance Company, which at that time then voided any coverage we had under our policy.

I hope you will understand our position in this matter.

Very truly yours,

Joseph J. Santillo

Joseph J. Santillo
Fairfield Service Office
Claims
lh

cc: State of Connecticut, Insurance Department
Attention Jean M. Shea, Senior Examiner
Licenses and Claims

Pltf Exhibit 26
CASE NO. 76-70 Civil
FULL EXHIBIT
OCT 1 1976
FOR IDENTIFICATION
U.S. DISTRICT C
DISTRICT O

CLAIMS MEMO

MEMO DATE 3/10/71

POLICY NO. N24 7664

INSURED Haverich

DATE OF LOSS 2-19-71

F ✓ F.F. ☐ F ☐ F.N. ☐

CLAIMANT —

TO: EDC

ATTENTION OF: C. Wise

RE:

Dear Carol Ann, Killed in MVA. Ed Cassen - auto operator insured. Requests adj to get affidavit of Sick Insurance 2000.00 imp Coverage - Spread breakdown attach. Insurance all had 1971.00 of basic Insurance + 18.00 for Insurance from Mrs t Cons, when official received, will keep proof for 2000.00

BY J. Jennett

OFFICE Acc

NEXT REPORT DATE 4-15-71

IS IT LEGIBLE?

A-389 R9 2/65 PRINTED IN U.S.A.

CASE NO. 6-7x0
FULL EXHIBIT
OCT 1 1976
FOR IDENTIFICATION
U.S. DISTRICT COURT
DISTRICT OF CONN.

MEMO DATE 4/7/71
POLICY NO. N247064
INSURED Havenich
DATE OF LOSS 2-19-71
F ☐ F-F ☐ P ☐ FIN ☑
CLAIMANT —

received copy of letter of Mass. Atty. re: limit of liability proof received from state for limit of 2000.00. Issue Drafts in the amount. CR-210 attached. File Closed.

OFFICE Fco
NEXT REPORT DATE
IS IT LEGIBLE?

A-389 R9 2/65 PRINTED IN U.S.A.

LC-8

Def
CASE NO. B-70-28 Civil
FULL EXHIBIT ☑
OCT 1 1976
FOR IDENTIFICATION ☐
U.S. DISTRICT COURT
DISTRICT OF CONN.

MEMO DATE	POLICY NO.
July 29, 1971	N 247864
INSURED	
Havenich	(U/M Claim)
DATE OF LOSS	F ☐ F-F ☐ P ☐ FIN ☐
February 19, 1971	
CLAIMANT	

Joe, I received your memo of July 26, 1971 and the attachment from our insured's attorney, Sigmund Miller.

It would appear as though our insured's daughter was a passenger in an automobile owned and operated by Joseph A. Decesare of Franklin, Massachusetts. On the date in question Joseph A. Decesare drove his car over an embankment and killed our insured's daughter.

Information in file from Fireman's Fund who carried the liability on the Decesare vehicle states that they were covered under a $5/10,000 policy which meets the minimum statute requirements in the State of Massachusetts. Evidently Fireman's Fund paid the $5,000 and now Miller is coming to us for an additional $15,000 or the differentiation between the $5,000 given by Fireman's Fund and the $20,000 Uninsured Motorist coverage afforded our insured in the State of Connecticut, [redacted].

If you will look at the Uninsured Motorist portion of our insured's policy you will see that the adverse vehicle operated by Decesare was not an uninsured motor vehicle in that it was insured up to the requirements provided by statute in the State of Massachusetts and therefore does not qualify as an uninsured motor vehicle. Hence, no Uninsured Motorist coverage against our insured's Auto policy.

I would advise you to contact our insured's personal attorney and advise him of same and that there will be no payments made by SAFECO under the Uninsured Motorist portion of their policy.

John Fellers
Eastern Division Claims
bw

Joe — I think John interpreted the way off — I assumed lets get in phone + so the we could thus follow up

F.C.B.O. AUG 2 - 1971

BY	OFFICE	I WILL REPORT BY

IS IT LEGIBLE? 360

CA-931 12/70 PRINTED IN U.S.A.

LC-1

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

rcvd 11/16/76

- - - - - - - - - - - - - - - - - - -

ELSIE M. HAVANICH,

Plaintiff

vs.

SAFECO INSURANCE COMPANY OF AMERICA,

Defendant

CIVIL ACTION NO. B-720

OCTOBER 1 & 5, 1976

AT WATERBURY

- - - - - - - - - - - - - - - - - - -

B E F O R E:

THE HONORABLE THOMAS F. MURPHY
Senior United States District Judge

TESTIMONY OF SIGMUND MILLER
AND
MOTION FOR DIRECTED VERDICT

A P P E A R A N C E S:

FOR THE PLAINTIFF

Messrs. GORDON & HILLER
By: A. REYNOLDS GORDON, ESQ.
855 Main Street
Suite 945
Bridgeport, Connecticut 06604

FOR THE DEFENDANT

Messrs. BAI, POLLOCK & DUNNIGAN
By: ARNOLD BAI, ESQ.
10 Middle Street
Bridgeport, Connecticut 06604

1
2 MR. GORDON: I call Mr. Sigmund Miller.

3 S I G M U N D L. M I L L E R, called
4 as a witness, having been first duly sworn,
5 testified on his oath as follows:
6 THE CLERK: Will you state your full
7 name and address for the record, please?
8 THE WITNESS: Sigmund M. Miller.
9 835 Main Street, Bridgeport.
10 THE CLERK: Thank you.
11 DIRECT EXAMINATION
12 BY MR. GORDON:
13 Q Mr. Miller, would you state your occupation?
14 A I am an attorney.
15 THE COURT: That is a profession,
16 isn't it?
17 THE WITNESS: You're correct, Your Honor
18 Thank you.
19 THE COURT: Yes. All right.
20 BY MR. GORDON:
21 Q And were you practicing law in the City of
22 Bridgeport in 1971, Mr. Miller?
23 A I was.
24 Q Mr. Miller, when you were requested to handle
25 the Estate of Carol Ann Havanich, what was the first thing
that you did?

A Got an investigation going.

Q And what did that involve doing?

A Well, I sent the investigator that our office uses, Mr. Edward Staber, to Massachusetts to find out exactly what had happened and get all relevant information.

Q And did he thereafter report back to you?

A He did.

Q Do you know the approximate date?

A As I recall, it was either later on February 24th or the early morning of February 25, 1971.

Q And did you thereafter call Safeco?

A I did.

Q Now, Safeco is the Havanich's insurance carrier; is that right?

A That is correct.

Q Well, why did you call Safeco?

A My insurance investigator called me and he said,"I've got bad news. The assured has a $5000 insurance policy."

Q The "assured" meaning who?

A The young man who was driving the car in which Miss Havanich was killed.

Q And he had a $5000 policy?

THE COURT: Oh, Counsel, please. It was quite clear and lucid, and the jury all heard

1 it. I don't think you should repeat it, really.
2 BY MR. GORDON:
3 Q Mr. Miller, are you also a Massachusetts
4 attorney?
5 A When I graduated, I took the Bar Exam, and
6 I have been a member of the Massachusetts Bar ever since,
7 but I practice in Connecticut.
8 Q Do you know whether the $5000 liability
9 insurance is a minimum Massachusetts policy?
10 A I know that it was.
11 Q And why then did you call Safeco?
12 A I wanted to put Safeco on notice that there
13 was an uninsured motorist claim pending.
14 Q Well, you just told us that there was $5000
15 insurance. Explain that.
16 A I knew by that time that there was a $20,000
17 uninsured motorist coverage on the Havanich policy. So
18 that means there is a difference of $15,000 at that
19 point.
20 Q I see. Now, with whom did you speak at
21 Safeco?
22 A Mr. Blazak who is the Head Supervisor of
23 the company, as I understood it.
24 Q The Claims Manager in the Fairfield Office?
25 A Fairfield Office, that's correct.

1 Q And would you tell us what the conversation
2 was, please?
3 A Well, I started off, and I told him I was
4 calling because there was a $5000 policy, their assured
5 had a $20,000 uninsured motorist protection.
6 Now, he immediately told me that as
7 far as that is concerned, his company has been through
8 this before, they have an iron-clad decision in the case
9 that as far as the Safeco Insurance Company is concerned,
10 the driver of the death car is insured, he has the $5000
11 minimum requirement of the State of Massachusetts.
12 Because of that he cannot be termed an uninsured motorist.
13 That is their policy and that's it.
14 Q Then what was he telling you with respect to
15 the $20,000 uninsured motorist coverage that is contained
16 in the insurance policy that Safeco issued?
17 A What he is telling me?
18 MR. BAI: Objection. He stated the
19 conversation.
20 THE COURT: Why, of course, and the
21 jury draws the inference, and I'm sure realizes
22 what the inferences were and everything.
23 BY MR. GORDON:
24 Q Was there anything else discussed?
25 A Yes. The medical payment insurance. They

had $2000, and I believe I indicated I would send them bills.

Q I see. Now, did you subsequently send a letter to Safeco?

A I did.

(EXHIBIT 4 OFFERED, RECEIVED AND READ TO JURY)

* * * *

1 * * * *

2 BY MR. GORDON:

3 Q Mr. Miller, is there a reason why you didn't

4 state in the letter, "We are also making claim for

5 $15,000 or $20,000 uninsured motorist coverage."?

6 A He had told me very definitely that it was

7 the policy of the company or, rather, the company did

8 not recognize this particular situation as being an

9 uninsured motorist claim.

10 Now, I know from experience that you

11 cannot talk a company into changing an interpretation

12 of their policy, that the only thing I could do was to

13 collect the amount of money that was available in

14 Massachusetts, and then start a suit and let the Court

15 determine whether or not there is uninsured motorist

16 coverage.

17 Q Meaning start a suit against --

18 A Against Safeco.

19 MR. GORDON: I see. There is one

20 exhibit that I misplaced momentarily, Your Honor.

21 I will offer this document.

22 MR. BAI: No objection.

23 (Copy of letter dated March 9, 1971

24 received and marked Plaintiff's Exhibit 5.)

25

1 BY MR. GORDON:

2 Q Tell us, Mr. Miller, did you approximately

3 a week later send the funeral bill to the insurance

4 company?

5 A I did.

6 Q Is the funeral bill part of what is covered

7 under medical payments?

8 A It is.

9 Q And what was the total amount of that?

10 A Well, the funeral bill was 2549.88, and the

11 total available medical payments were $2000.

(EXHIBIT 6 OFFERED, RECEIVED AND READ TO JURY)

* * * *

* * * *

(EXHIBIT 7 OFFERED, RECEIVED AND READ TO JURY)

18 BY MR. GORDON:

19 Q Who is Natalina Introini?

20 A I was advised by the investigator that she

21 was the attorney representing the driver of the death

22 car, Mr. DeCesare.

* * * *

* * * *

17 BY MR. GORDON:

18 Q Mr. Miller, is there a reason why you didn't

19 refer to the fact that there was $5000 insurance coverage

20 when you wrote to that attorney?

21 A Well, I asked her for the name of the

22 insurance company and the policy limits.

23 THE COURT: No. He wants to know why

24 you didn't mention the fact that you knew there

25 was a $5000 coverage.

1 THE WITNESS: I couldn't see any point
2 in mentioning it to her.
3 BY MR. GORDON:
4 Q You wanted to get it from her?
5 A Right.
6 Q Now, did you receive a response from her,
7 Mr. Miller?
8 A I did.
9 MR. GORDON: I offer this.
10 THE WITNESS: Can I supplement that
11 answer, Your Honor?
12 THE COURT: Yes. You can correct or
13 change any answer you give at all.
14 THE WITNESS: I just want to add to it.
15 The Safeco Insurance Company had asked me to get --
16 I believe they said an affidavit of the insurance
17 policy and the amount of coverage, and I would
18 have asked for this information anyway, but that
19 was one of the reasons.
20 THE COURT: But they only asked you
21 that in the letter of March 9th, didn't they?
22 THE WITNESS: March 9th?
23 THE COURT: This appears to be dated
24 3-2. Maybe I've got it wrong.
25 THE WITNESS: No. You are probably

1 right. You are absolutely correct. It is in
2 their letter of March 9th. So I just sent off a
3 routine letter asking for the information.
4

* * * *

(EXHIBIT 8 OFFERED, RECEIVED AND READ TO JURY)

23 BY MR. GORDON:
24 Q What did you do with Ms. Introini's letter
25 of March 17th when you received it, Mr. Miller?

1 A I am pretty sure I sent a copy to Safeco.

2 Q And would that have been with your letter

3 of March the 25th?

4 A Yes.

5

* * * *

(EXHIBIT 9 OFFERED, RECEIVED AND READ TO JURY)

* * * *

10 BY MR. GORDON:

11 Q Mr. Miller, the 5000/10,000, what does the

12 10,000 mean?

13 A Well, the 10,000 means that if there is

14 more than one person who is injured, the limit is 10,000

15 but if it's only one person, the limit is 5,000.

16 Q So that for the death of Carol Ann Havanich

17 --

18 THE COURT: I think the jury can

19 make the inference on that, counsel, really.

20 BY MR. GORDON:

21 Q Did you thereafter receive the $2000 payment

22 from --

23 THE COURT: The lady said she got

24 $2000 already. The girl's mother already told

25 us that.

1 MR. GORDON: Very well, Your Honor.

2 BY MR. GORDON:

3 Q When approximately did you receive the

4 $2000 payment from Safeco for the medical payments?

5 A The check was dated April 7, 1971.

6 Q Very well. Now, after that -- question

7 withdrawn.

8 At the point when Safeco was paying

9 the medical payments, that $2000, at that point was

10 there any claim made by Safeco that Carol Ann Havanich

11 was not a resident of the household?

12 A Not to me.

13 Q After you received that $2000 check for the

14 medical payments, what essentially did you do next on

15 the case?

16 A I proceeded to get the money that was

17 obtainable in Massachusetts from Fireman's Fund.

18 Q And did you succeed?

19 A I got $5000. I believe we signed the papers

20 on July 1st. So I assume that the check came shortly

21 thereafter.

22 MR. GORDON: I offer this.

23 MR. BAI: There is no objection.

24 (Copy of letter dated July 1, 1971

25 received and marked Plaintiff's Exhibit 10.)

1
2 MR. GORDON: Exhibit 10 is Mr. Miller's
3 July 1 letter to the Fireman's Fund enclosing
4 various papers for the settlement.
5 THE COURT: Well, maybe the jury would
6 be interested in hearing what the papers were. Is
7 that relevant at all?
8 MR. GORDON: Well, I believe part of
9 them are already in evidence, but I will read it.
10 THE COURT: I would think it is in
11 evidence about the fact that she got the money
12 and signed the release.
13 MR. GORDON: "Dear Mr. Russo: Pursuant
14 to your letter of June 25, enclosed please find
15 the following:
16 1. General release executed by
17 Elsie Margaret Havanich, Administratrix in
18 consideration of $5000.
19 2. Agreement for judgment.
20 3. Writ.
21 4. Declaration.
22 5. Answer.
23 Pursuant to your letter, I shall expect
24 your draft within the next few days.
25 Very truly yours, Sigmund L. Miller."

1 BY MR. GORDON:

2 Q The reference to the Agreement For Judgment,
3 Writ, Declaration, Answer, were those Massachusetts
4 lawsuit papers that --

5 A Yes. In other words, the way in which the
6 death action is settled is by having those papers filed
7 and having it go through immediately and approved by
8 the Court.

9 Q Now, following receipt of the check from
10 Fireman's Fund for $5000, what was the next thing you
11 did in the case, Mr. Miller?

12 A Well, almost from the start I started to
13 get together what decisions I could on the law involving
14 the question of uninsured motorist. It was my feeling
15 --

16 THE COURT: Wait. Wait. Are you
17 going to express an opinion?

18 THE WITNESS: I am afraid so. May I
19 have the question read again, please, Mr. Gordon?

20 MR. GORDON: Well, I can't read the
21 question again. I can ask Your Honor to have it
22 read again.

23 THE COURT: Well, don't you recall what
24 the question was? You can rephrase it, if you
25 will.

1 MR. GORDON: I will pose a new
2 question.
3 THE WITNESS: Please.
4 THE COURT: All right.
5 BY MR. GORDON:
6 Q What was your view of the uninsured motorist
7 problem with Safeco?
8 MR. BAI: Well, now that is objected
9 to.
10 THE COURT: Sustained. He is not
11 permitted to express an opinion on that. Uncle Sam
12 is going to pay me eventually at the end of the
13 month, I hope.
14 MR. GORDON: I will withdraw that
15 question.
16 BY MR. GORDON:
17 Q What was your next step, Mr. Miller?
18 A My next step was to collect from Safeco.
19 Q And what did you do?
20 A I called the Insurance Commissioner's Office.
21 Q Why?
22 A Well, it was my feeling --
23 MR. BAI: Well, now I am going to
24 object again.
25 THE COURT: Sustained. Yes.

(EXHIBIT 12 OFFERED, RECEIVED AND READ TO JURY)

* * * *

* * * *

18 BY MR. GORDON:

19 Q Mr. Miller, did you receive a response from

20 the Insurance Department in July?

21 THE COURT: Well, assuming that he

22 did, would you --

23 MR. BAI: I would object to it.

24 MR. GORDON: I am going to offer it,

25 Your Honor.

1
2 THE COURT: We will mark if for
3 identification. It's objectionable. Sustained.
4 This is number what?
5 THE CLERK: Plaintiff's Exhibit 13
6 for identification.
7 (Letter from State of Connecticut
8 to Mr. Miller dated 7-23-71 marked Plaintiff's
9 Exhibit 13 for identification.)
10 BY MR. GORDON:
11 Q Did you thereafter speak with anyone at
12 Safeco, Mr. Miller?
13 A After what date?
14 Q After mid-July.
15 A I don't have all my correspondence here.
16 THE COURT: No. The question was:
17 Did you speak after your letter of 7-16?
18 THE WITNESS: I know there were calls,
19 there were conversations after that date in 1971
and probably '72.

(EXHIBIT 14 OFFERED, RECEIVED AND READ TO JURY)

* * * *

* * * *

BY MR. GORDON:

Q Mr. Miller, did you at some point in September -- I'm sorry -- in late August or early September, would you address yourself to that period of time?

THE COURT: Of the year '71?

MR. GORDON: Excuse me, Your Honor.

THE COURT: Of the year 1971?

MR. GORDON: Yes, Your Honor. 1971.

THE COURT: Yes.

BY MR. GORDON:

Q -- talk with Mr. Santillo from Safeco?

1 A Did you say in August or September?
2 Q Late August or early September?
3 A Yes. I did. In September, I believe.
4 Q And can you tell us what the conversation
5 was?
6 A Well, Your Honor, I don't know how to answer
7 this question because you ruled out a particular letter
8 and it happened to be a call from Mr. Santillo who by
9 now is the Supervisor of the Company with reference to
10 that letter, with reference to a follow-up by the
11 company and telling me that there was a change of heart.
12 Q Just tell us what the conversation was.
13 MR. BAI: If Your Honor please, I
14 don't know what this conversation is.
15 THE COURT: I don't know either.
16 Why don't we reserve it until sometime when we
17 do not have these ladies and gentlemen. As soon
18 as we adjourn for lunch and the jury is excused
19 maybe we can do it then which will be shortly.
20 MR. GORDON: Very well, Your Honor.
21 THE COURT: Counsel, really, I don't
22 mean to be upset, but you are taking an unusually
23 long time between each question and each exhibit.
24 Can we speed it up a lettle?
25 MR. GORDON: What I am doing is I am

1 trying to cull down the exhibits in deference to
2 Your Honor's ruling. I am not going to offer
3 documents that I think Your Honor is going to
4 overrule unless I really need them for my case.
5 THE COURT: All right, counsel. I'm
6 sorry. Go ahead.
7 MR. GORDON: I offer this document.
8 MR. BAI: Again, Your Honor, I would
9 have to object to certain portions of this. I
10 don't know how to handle it, but there are --
11 THE COURT: Well, we will hold it
12 until later then. All right. Certain part is
13 all right and certain part is not.
14 MR. BAI: Yes.
15 THE COURT: I will hold it until the
16 recess.
17 MR. GORDON: Very well.
18 BY MR. GORDON:
19 Q Mr. Miller, can you tell us from late
20 August on what conversations you had with Mr. Santillo?
21 THE COURT: Well, Mr. Miller told
22 us that he is afraid to talk about one and we
23 reserved that one until the jury is excused.
24 Can you give him a hint about what you want on
25 the other conversations?

1 MR. GORDON: Well, I would want them
2 in order and I think --
3 THE COURT: All right, counsel.
4 MR. GORDON: I think we are at that
5 point, Your Honor.
6 THE COURT: You are the one then that
7 has to step forward.
8 THE WITNESS: Well, because I am an
9 attorney, Your Honor, I know you have ruled to
10 exclude a certain letter and I don't know whether
11 or not you want me to speak about it.
12 THE COURT: Well, that is why I
13 suggested to counsel, but my suggestion wasn't
14 adopted. So I don't know where we are.
15 MR. GORDON: If Your Honor please,
16 I don't have anything more of Mr. Miller unless
17 we can proceed along this line. That is what I
18 am really saying.
19 THE COURT: Do you have another
20 witness?
21 MR. GORDON: Yes, but I would really
22 hate to break it up at this stage.
23 THE COURT: Listen. We have all gone
24 to the movies, we come in at the middle of them,
25 we have come in at the end. We read stories, we

read backwards. I'm sure this jury is competent to pick up Mr. Miller's testimony.

MR. GORDON: Fine. I will put Mr. Morrison on then, Your Honor.

THE COURT: Would you step down, Mr. Miller?

* * * * *

MR. GORDON: We recall Mr. Miller.

DIRECT EXAMINATION

BY MR. GORDON: (Continued)

Q Mr. Miller, did you have a conversation with Safeco on August 31st?

THE COURT: With the corporation?

BY MR. GORDON:

Q With Mr. Santillo of Safeco on August 31, 1971?

A I did.

Q All right. Tell us what was said in the conversation?

A Well, the gist of it was Mr. Santillo had indicated that as a result of the Insurance Commissioner's

appointing --

MR. BAI: I am going to object to that, if Your Honor please. That is the same area that we were in this morning.

THE COURT: Sustained. Yes.

MR. GORDON: Your Honor, this is something stated by the --

THE COURT: Please. I don't care whether it was stated by you or the Commissioner or God himself. It is not admissible in this lawsuit. Now, you have an exception.

BY MR. GORDON:

Q Mr. Miller, confine your answer -- I will withdraw that.

Mr. Miller, without indicating what Mr. Santillo said that the Insurance Department did or said, just what Mr. Santillo was saying about Safeco and what Safeco was doing or going to do?

A Mr. Santillo indicated that Safeco had changed its position on this not being under the uninsured motorist clause and that they were ready to pay.

Q Now, when you said "changed its position", in the context of your conversation and without referring to the Insurance Commissioner, tell me what you are

1 talking about, please?

2 A They had --

3 MR. BAI: Well, that is objected to.

4 He testified to the conversation.

5 THE COURT: Yes. I think if you want

6 him to, he can tell us what Mr. Santillo said, but

7 only with regard to the policy and not with regard

8 to what somebody else said or did.

9 MR. GORDON: Right. It is only with

10 regard to the policy that I am asking, Your Honor.

11 Q What was the position that they were changing?

12 A They had --

13 MR. BAI: Well, that is objected to,

14 Your Honor. He repeated the conversation with

15 regard to the policy.

16 THE COURT: No. I think he is

17 entitled to tell us what it meant, what he

18 understood the position to have been that was

19 changed.

20 Do you understand, Mr. Miller?

21 THE WITNESS: I do, Your Honor.

22 THE COURT: Yes. You may tell us that.

23 THE WITNESS: Starting on February 25th

24 it was Safeco's position that because the driver

25 of the death car was insured in Massachusetts,

1 even though it was only $5000, therefore, the
2 uninsured motorist protection clause did not
3 apply in this case even though there was $20,000
4 worth of uninsured protection. And when
5 Mr. Santillo called, he indicated that the
6 company had reversed its position and was now
7 ready to pay.
8 MR. GORDON: And I now offer this
9 document.
10 MR. BAI: It is objected to, Your Honor.
11 MR. GORDON: I think I need an
12 identifying statement from the witness, Your Honor.
13 THE COURT: Oh, wait, counsel. I
14 have a problem. I can read to whom the letter
15 is addressed and there is no indication to my
16 vision as to who sent it.
17 MR. GORDON: May I ask the witness,
18 Your Honor?
19 THE COURT: If he knows.
20 MR. GORDON: Yes.
21 BY MR. GORDON:
22 Q Mr. Miller, do you know who James P. Ostrowski
23 is?
24 A Yes.
25 Q Who is he?

1

A He was associated with the Safeco, Fairfield

2

Office.

3

Q And indeed, in September of '71, was he not

4

the Claims Manager successor to Mr. Blazak?

5

A As far as I know he was.

(EXHIBITS 22, 23 and 24 OFFERED, RECEIVED AND READ TO JURY)

* * * *

1 * * * *

2 BY MR. GORDON:

3 Q Do you remember whether you talked with

4 Mr. Santillo or Mr. Ostrowski following that, Mr. Miller?

5 A Yes. I am pretty sure I did. Following

6 what date, please?

7 Q January the 18th, 1972.

8 A I know that in August of '72 I phoned

9 Mr. Ostrowski regarding the company paying voluntarily

10 and the reply was that the company is sticking to its

11 denial of payment.

12 Q I see.

13 A That date was January, 1972.

14 Q Yes.

15 A Unless you have a letter to refresh my

16 recollection, I have nothing else here.

17 Q I am going to show you this document,

18 Mr. Miller. Did you receive that letter, Mr. Miller,

19 with a check from Fireman's Fund?

20 A I did.

21 Q And was that the $2000 check that you

22 received with that letter?

23 A That's correct.

24 Q And there is a document paper clipped behind

25 that letter. Was that received with the letter?

1 A It was.

2 Q And does the letter and the document together

3 explain what the $2000 payment represents?

4 A I would say so.

(EXHIBIT 25 OFFERED, RECEIVED AND READ TO JURY).

* * * *

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21 CROSS EXAMINATION

22 BY MR. BAI:

23 Q Mr. Miller, you first spoke to Mr. Blazak --

24 what was the date that you gave us?

25 A February 25.

1 THE COURT: February 25 of --

2 THE WITNESS: 1971, Your Honor.

3 BY MR. BAI:

4 Q So that was within a few days of the

5 accident?

6 A That's correct.

7 Q And at that point when you spoke to Mr. Blazak,

8 you were making a claim or advising Mr. Blazak of a claim

9 under the medical payments portion --

10 A Definitely not.

11 Q -- of the Havanich insurance?

12 A I don't have to advise an insurance company

13 of a claim for medical payments. That is coming to the

14 assured, to the person injured. I advised him that we

15 have an uninsured motorist claim, that their customer

16 has.

17 Q Part of your discussion was about uninsured

18 motorist coverage, wasn't it?

19 A Ninety-nine percent of it.

20 Q And part of your discussion was about

21 medical payments coverage?

22 A As an after-thought, yes.

23 Q Mr. Blazak advised you during that conversation

24 to forward --

25 THE COURT: Counsel, excuse me. You

1 have to make believe you are talking to the
2 witness.
3 MR. BAI: I am sorry, Your Honor.
4 I thought I was.
5 THE COURT: You seem to be wandering
6 around. Your face is either at the jury, looking
7 at them or at the floor, but nowheres coming
8 close to looking at the witness.
9 MR. BAI: It's force of habit,
10 Your Honor.
11 THE COURT: Well, I am afraid I am
12 going to change it, I think. I don't know whether
13 I am going to succeed.
14 BY MR. BAI:
15 Q Mr. Blazak, advised you to forward bills,
16 didn't he, under medical payments coverage?
17 A The conversation was about the --
18 THE COURT: No. I think you can say
19 yes or no or you can't recall.
20 THE WITNESS: Well, I can't say that,
21 Your Honor. I may have said at the end, "I've
22 got the funeral bill and I'll send it in." and
23 yes, that's it.
24 BY MR. BAI:
25 Q And that was understood you were referring

1 at that time to the medical payments coverage?

2 A To the funeral bill, the $2000 in bills,

3 right.

4 Q As far as the uninsured motorist coverage

5 was concerned, Mr. Blazak, you say, told you that there

6 was no such coverage?

7 A That's correct.

8 Q Mr. Miller, did you dispute that fact with

9 him?

10 A No. I listened to what he had to say about

11 his company's position.

12 Q And did you agree with that position?

13 A No. I neither agreed nor disagreed.

14 Q Did you then write to Mr. Blazak putting

15 him on notice of an uninsured motorist claim?

16 A Certainly. I told him about the $5000

17 policy in the letter of March 2nd, the first letter

18 I sent out.

19 Q Did you tell Mr. Blazak in that letter that

20 you were making a claim for uninsured motorist coverage?

21 MR. GORDON: Objection. The letter

22 speaks for itself.

23 THE COURT: Sustained. Yes.

24 BY MR. BAI:

25 Q Well, I won't take time to find that letter

1 now, but Mr. Miller, did you at any time within, oh,
2 thirty days of that conversation ever write to Mr. Blazak
3 or anybody at Safeco Insurance Company and say, "We are
4 making a claim under uninsured motorist coverage."?
5 A Yes.
6 Q Okay. To whom did you write?
7 A Mr. Joseph Santillo on March 25th.
8 Q Okay. May I see that letter, please?
9 A Certainly. (Hands document)
10 Q Now, that letter is Exhibit 9, I believe.
11 Mr. Miller, showing you Exhibit 9 which is the letter,
12 a copy of which you just called to my attention, isn't
13 it so that nowhere in that letter is there any mention
14 of a claim under uninsured motorist coverage?
15 A Mr. Bai, it all depends on who I am talking
16 to. If I am talking to a layman, it doesn't spell it
17 out. But if I am talking to the insurance company, I
18 am not going to mention the $5000 insurance coverage
19 unless I am talking about that claim, and I know he
20 knows it.
21 MR. BAI: Well, Your Honor, I claim
22 the answer to that question. It hasn't been
23 answered.
24 THE COURT: Is the question whether
25 there is anything in the letter?

1 MR. BAI: Yes.

2 THE COURT: Don't you agree there is

3 nothing in the letter about it?

4 THE WITNESS: It speaks for itself.

5 THE COURT: I know it does.

6 THE WITNESS: I will admit it isn't

7 in the words Mr. Bai is putting it in, but I think

8 the inference is clear.

9 THE COURT: Very well.

10 BY MR. BAI:

11 Q And further more, isn't it so, Mr. Miller,

12 that you end the letter by saying, "I trust this will

13 complete the matter of the medical payment of the

14 funeral bill."?

15 A Exactly, leaving open the uninsured motorist

16 question.

17 Q Which is not mentioned anywhere in your

18 letter?

19 A But I know I didn't say that I am -- that

20 this concludes the matter. I said, "I hope this will

21 complete the matter of the medical payment of the funeral

22 bill."

23 Q Isn't it so, Mr. Miller, that it wasn't

24 until July of 1971, some five months after the accident,

25 that you first directly notified Safeco in writing that

1 there was a claim being made under the uninsured motorist
2 coverage provisions?
3 A I did not notify them as explicitly before
4 that date as I did on that date in writing, but they
5 knew there was a claim.
6 MR. BAI: Now, I move that last part
7 go out.
8 THE COURT: Yes. But you wait too
9 long. But I will strike it, yes. Object as soon
10 as the witness wanders from the responsibility
11 that he has to answer responsively.
12 MR. BAI: Thank you, Your Honor.
13 BY MR. BAI:
14 Q Aside from that conversation that you spoke
15 about on February 25th with Mr. Blazak, from the time
16 of that conversation until July of 1971, did you ever
17 discuss an uninsured motorist claim with anyone at
18 Safeco?
19 A There was more than one conversation according
20 to my letter of March 9th. I have no independent
21 recollection of it. I don't have any independent
22 recollection of speaking to anybody specifically about
23 the uninsured motorist claim after these letters.
24 Q Until sometime after July of 1971; isn't
25 that correct?

1 A That's correct.

2 Q Mr. Miller, when was it that that liability

3 claim was settled with Fireman's Fund and you received

4 the $5000?

5 A I believe the Release was signed on

6 July 1st and presumably, the check was sent within

7 the next week or two.

8 Q Before you concluded the settlement of that

9 liability claim, Mr. Miller, did you notify anyone at

10 Safeco that you intended to settle the claim with

11 Fireman's Fund?

12 A As far as I am concerned, once they said --

13 THE COURT: No. The question is:

14 Did you?

15 THE WITNESS: Specifically in writing,

16 no.

17 THE COURT: No. Orally? No or yes?

18 THE WITNESS: I would have to say

19 yes, Your Honor, because of the inference of the

20 conversation.

21 THE COURT: I am not asking why.

22 Your answer is that you did not notify them in

23 writing, but you did orally?

24 THE WITNESS: Yes, sir.

25 THE COURT: Thank you.

1 BY MR. BAI:

2 Q You notified Safeco orally prior to taking

3 this Release?

4 A I notified them on February 25th orally.

5 Q Okay. And on February 25th orally, what

6 did you tell them about this Release?

7 A Well, I told them I was going to settle

8 the case. We are going to proceed against Fireman's

9 Fund.

10 Q Yes. Did you tell them that you had a

11 settlement arrived at with Fireman's Fund?

12 A Of course not.

13 Q Because you didn't at that time; isn't that

14 right?

15 A No.

16 Q When did you arrive at a settlement with

17 Fireman's Fund?

18 A Well, it had to be just before July 15th,

19 as a matter of fact.

20 Q Before July 15th?

21 A I have papers -- July 1st. I got papers

22 together with a letter of June 25th.

23 Q Sometime in the latter part of June then

24 you agreed to accept the $5000 payment from Fireman's

25 Fund?

1 A I would say that is correct.
2 Q At that time did you notify --
3 A I did not.
4 Q -- Safeco of the impending settlement,
5 either orally or in writing?
6 A No, sir.
7 Q Did you at that time have a copy of the
8 Safeco policy issued to Mr. and Mrs. Havanich?
9 A I am sure I did.
10 Q That was contained in your file, wasn't it?
11 A That's correct.
12 Q And I assume that you were familiar with
13 that policy?
14 A Well, let's say moderately.
15 Q Well, Mr. Miller, you have been an attorney
16 since 1935 in the State of Connecticut, haven't you?
17 A Yes, sir.
18 Q And you have handled over the years many
19 insurance matters?
20 A There is a difference between an insurance
21 matter and a situation where you've got --
22 Q That is not what I am asking you, Mr. Miller.
23 Have you handled many insurance matters?
24 A I will have to answer yes to that.
25 Q And over the years you have been active in

1 the field of negligence and compensation work?

2 A True.

3 Q And you were familiar with the basic

4 coverages, and I am talking about the year 1971,

5 contained in an automobile liability insurance policy?

6 A Somewhat.

7 Q And in particular, you were familiar with

8 the coverages contained in the Havanich insurance policy?

9 A And also the contention of Safeco as to

10 what it meant.

11 Q No. I was asking you whether you were

12 familiar with the coverages?

13 A I was familiar with what the policy said

14 and Safeco's interpretation.

15 Q Mr. Miller, you knew at that time and, again,

16 I am talking about late June of 1971, that the policy

17 contained a provision prohibiting settlement of third

18 party claims or liability claims under the uninsured

19 motorist provision without prior approval of Safeco?

20 A I don't have any present recollection, but

21 it's very possible that I did.

22 Q Well, Mr. Miller, isn't it so that you knew

23 of that provision in June of 1971?

24 A Let's say I did. If they said, "There is

25 no coverage.", what difference does it make?

1 MR. BAI: Your Honor, again, I ask
2 that answer be stricken and the question answered.
3 THE COURT: Yes. It is stricken.
4 It is not responsive.
5 BY MR. BAI:
6 Q You knew of that provision in 1971 late in
7 June, didn't you?
8 A I might have.
9 Q You aren't telling us that you were pursuing
10 a claim under the uninsured motorist coverage of the
11 Havanich policy without having examined those coverage
12 provisions?
13 A I said I might have known. It's five years.
14 Q As a matter of fact, Mr. Miller, isn't it
15 so that you were well aware of the provision prohibiting
16 third party settlements?
17 A My answer still stands. I might have known.
18 Q And in spite of what you might have known,
19 you did not notify Safeco orally or in writing or any
20 other way that you were going to accept $5000 from the
21 DeCesare insurance carrier?
22 A You mean after late in June?
23 Q Yes.
24 A Correct.
25 Q Now, after the settlement was consummated

1 and the Release executed for the $5000 payment, did
2 you then during July of 1971 notify Safeco?
3 A I sent a letter of July 16th.
4 Q Right. And that was the first notification
5 to Safeco that a Release had been executed and the
6 DeCesare claim settled?
7 A I would say that is correct.
8 MR. GORDON: Objection. I am not
9 sure if that is in evidence, Your Honor. If it
10 is, --
11 THE COURT: Anyway, the witness said
12 that he assumes that is correct.
13 MR. GORDON: But I object to the
14 question unless the document is in evidence,
15 and if I am incorrect on its being in evidence, --
16 MR. BAI: I don't think it's relevant.
17 He referred to a document and said that was the
18 notice.
19 MR. GORDON: It is in evidence. I
20 will withdraw my objection.
21 BY MR. BAI:
22 Q Now, incidentally, Mr. Miller, are you still
23 representing the Estate of Carol Havanich?
24 A As of this morning, I spoke to Mrs. Havanich
25 and suggested that since Mr. Gordon is representing her

1 in this case, he might just as well finish it up by
2 filing the account in the estate, and I got her
3 permission to turn the estate over to him.
4 Q As of yesterday, were you representing the
5 estate?
6 A I was. I still haven't turned it over.
7 Q And you still have the estate file in your
8 possession?
9 A That's correct.
10 Q And you have, I take it, represented the
11 estate from February 24, 1971 or so at least up to this
12 morning?
13 A I got the papers to sue and filed the solvent
14 notice, and that's it. Nothing has happened in four
15 and a half years.
16 Q During that period of time though you have
17 been representing the estate?
18 A Nothing has happened, but the file has been
19 there.
20 Q Well, now Mr. Miller, you can answer that
21 question.
22 A I will say yes. Nothing has happened.
23 Q Are you attorney for the estate or not?
24 A I beg your pardon?
25 MR. GORDON: Objection. He already

1 answered that he is not now representing the
2 estate, Your Honor.
3 MR. BAI: I will withdraw it.
4 BY MR. BAI:
5 Q Mr. Miller, from February 24, 1971 until
6 this morning, you were attorney for the Estate of
7 Carol Havanich, weren't you?
8 A That is correct.
9 Q And you were the attorney who authorized
10 Mr. Gordon to go forward and bring this suit?
11 A With Mrs. Havanich's permission, Mr. Havanich's
12 permission, of course.
13 Q Can you tell me whether there are assets in
14 the estate other than this claim against Safeco?
15 A Certainly, I can tell you. This is the
16 only asset.
17 Q And have you been paid for your services
18 to this estate?
19 A No. There hasn't been any final -- anything
20 done finally in this matter.
21 Q So that any payment you receive would have
22 to be really derived from a recovery in this case?
23 A No, not at all. There is money --
24 MR. GORDON: Objection.
25 THE COURT: There is an objection.

1 The objection is what?

2 MR. GORDON: I will withdraw the

3 objection.

4 THE WITNESS: There is money that has

5 been collected.

6 BY MR. BAI:

7 Q But you have never billed the estate up to

8 now?

9 A I thought it was premature.

10 Q And you are expecting to be paid for your

11 services?

12 A Yes, sir.

13 MR. BAI: I have no further questions.

14 Thank you.

15 REDIRECT EXAMINATION

16 BY MR. GORDON:

17 Q Mr. Miller, do you have your notes here,

18 that is, the outside of your file?

19 A Yes, sir.

20 Q Do you have a note for July 29, 1971?

21 A Yes. I do.

22 Q At that time did you have a telephone

23 conversation with someone?

24 A With Mr. Ostrowski.

25 Q That is the same Ostrowski whom you identified

1 as being the Claims Manager at the time successor to
2 Blazak?
3 A That is correct.
4 Q And what did Mr. Ostrowski at that time,
5 July 29, 1971, say?
6 A He maintained that the position of the
7 company is unchanged, that under that policy there is
8 insurance coverage and there is no uninsured motorist
9 coverage necessary.
10 Q When you say "There is insurance coverage",
11 you mean the $5000 Massachusetts policy?
12 A Correct. It's the same thing that Mr. Blazak
13 told me on February 25th. No change at all.
14 Q And did you make a note of that?
15 A I did.
16 Q And does the note of the July 29th conversation
17 even refer to Mr. Blazak?
18 A Well, it specifically says no coverage, there
19 is insurance, Ala Blazak.
20 Q I am going to show you Exhibit 4 and
21 Exhibit 9.
22 THE COURT: He has identified both
23 of those, counsel.
24 MR. GORDON: Here's 4.
25 THE COURT: He has already discussed

1 those.

2 MR. GORDON: Yes, but he was

3 questioned on them, Your Honor, by Mr. Bai.

4 BY MR. GORDON:

5 Q Mr. Miller, Mr. Bai questioned you about

6 whether or not you had made a claim for uninsured

7 motorist coverage in writing before July.

8 Now, in your March 2nd letter,

9 Exhibit 4, did you or did you not refer to uninsured

10 motorist coverage?

11 MR. BAI: That is objected to on the

12 ground that it speaks for itself.

13 THE COURT: Counsel, you made the

14 objection when the other counsel was talking

15 that the instrument speaks for itself, and I

16 think the witness was questioned rather closely

17 on that by Mr. Bai. The jury can have it read

18 again if you wish, which is most irregular since

19 they have heard it once now, but I will let you

20 read it again, if you want to.

21 MR. GORDON: Let me read it briefly.

22 THE COURT: I am talking about

23 Exhibit 9.

24 MR. GORDON: Yes. That is what I mean.

25 Exhibit 4 is what I was asking about.

(PORTIONS OF EXHIBITS 4 and 9 READ TO JURY)

* * * *

21 BY MR. GORDON:

22 Q Mr. Miller, is there any reason that you can

23 think of that you would have been indicating in those

24 two letters the $5000 Massachusetts coverage if it

25 weren't with reference to an uninsured motorist claim

1 with Safeco?

2 A No possible reason.

3 Q Now, Mr. Bai asked you about your familiarity

4 with the clause in the policy that says "Don't give any

5 releases or don't settle without the company's permission."

6 Why did you settle with Fireman's Fund,

7 DeCesare's $5000 insurance carrier? Why did you settle

8 with them without asking Safeco would they like to give

9 permission?

10 A Because --

11 MR. BAI: That is objected to. I

12 don't know --

13 THE COURT: I don't see how it is

14 going to be relevant. Supposing he said he had

15 a hunch about something. How would that help us?

16 MR. GORDON: Well, Your Honor --

17 THE COURT: Counsel, that is not

18 the reason we are here now and it is part of my

19 job to rule on the relevancy of these provisions

20 in the policy and not ask witnesses what they

21 would have done or why they didn't do certain

22 things because it is not going to help me. I

23 have to go on what he did or didn't do period.

24 Sustain the objection.

25 MR. GORDON: There is one I want to

read just one sentence from the July 16th letter, Your Honor, to Safeco. I don't believe this one has been read to the jury.

THE COURT: Really? Did you offer it?

MR. GORDON: No. I have read it to the jury. I'm sorry. I have no further questions.

THE COURT: Any recross?

MR. BAI: Yes.

RECROSS EXAMINATION

BY MR. BAI:

Q Mr. Miller, Mr. Gordon just got through asking you about those two letters, Exhibit 4 and 9, about whether there was any possible reason for writing them in the manner you did other than to make a claim under uninsured motorist coverage.

MR. GORDON: I object. I referred to just portions of the letter, not the whole letter.

THE COURT: Sustained. Yes.

BY MR. BAI:

Q In answering Mr. Gordon's questions about what you said in the letter referring to the DeCesare policy, you said that the reason for that was that you were making a claim under the uninsured motorist coverage.

1 A What letter are we talking about?

2 Q Exhibits 4 and 9, the two letters that

3 Mr. Gordon just showed you.

4 A Go ahead.

5 Q And you said there was no other possible

6 reason for those statements.

7 A To mention the $5000 policy. I will still

8 say that.

9 Q You were aware, Mr. Miller, that if the

10 DeCesare policy had medical payments coverage on it that

11 Safeco's medical payments coverage would not be primary,

12 but would only be excess?

13 A No. I don't think I even thought about that.

14 Q Isn't it so, Mr. Miller, that what you were

15 trying to tell Safeco in those two letters was that there

16 was no medical payments coverage on DeCesare and,

17 therefore, their policy was primary?

18 A Definitely not.

19 Q You say "No"?

20 A That's correct.

21 Q Incidentally, that conversation that you

22 testified to with Mr. Ostrowski that you just told

23 Mr. Gordon about on July 29, 1971, that was after the

24 release had been taken from Fireman's Fund, wasn't it?

25 A The release was signed on July 1.

1
2 Q Yes. And it was after you had notified
3 Safeco that the release had been signed?
4 A After the letter of July 16th.
5 Q Right. And at that point, Mr. Ostrowski
6 reaffirmed their position of lack of coverage?
7 A Just what I said.
8 MR. BAI: Nothing further.
9 REDIRECT EXAMINATION
10 BY MR. GORDON:
11 Q Did Mr. Ostrowski tell you that on account
12 of the release there was no coverage?
13 A No, sir.
14 Q What did he tell you?
15 A He said that their position was that the
16 uninsured motorist clause of the policy did not apply
17 in this case because Mr. DeCesare had a $5000
18 Massachusetts policy.
19 Q Is that the same thing Mr. Blazak had said?
20 A Exactly.
21 Q Did Mr. Ostrowski make any mention about
22 this release?
23 A No, sir.
24 Q Did he make any mention about the $5000
25 payment from Fireman's Fund?
A No, sir.

Q But your letter of July 16th had told him that Fireman's Fund was paid?

A That's correct.

Q Can you get paid by an insurance company on a personal injury case without a release?

MR. BAI: That is objected to.

THE COURT: Sustained. Yes.

MR. GORDON: No further questions.

RECROSS EXAMINATION

BY MR. BAI:

Q On July 29, 1971, Mr. Ostrowski told you that there was no coverage; is that correct?

A That there wasn't any uninsured motorist coverage?

Q Yes.

A That's correct.

MR. BAI: Nothing further.

MR. GORDON: Nothing further.

* * * * *

1 (The following transpired out of the
2 presence of the jury)
3
4 MR. BAI: I have a motion for directed
5 verdict that I would like to make either now or
6 Tuesday.
7 THE COURT: Do that now. Is it going
8 to take you an hour to do it?
9 MR. BAI: No, Your Honor. I said now
10 or Tuesday morning.
11 THE COURT: Yes. All right.
12 MR. BAI: I would simply move, if
13 Your Honor please, under Rule 50 (a) for a directed
14 verdict on the ground that there is no factual
15 question involved. It is undisputed that a
16 release was given by the plaintiff's own testimony.
17 THE COURT: Oh, there is no doubt
18 about that fact.
19 MR. BAI: The date is in evidence.
20 THE COURT: What troubles me is I
21 don't recall reading in your memorandum any
22 Connecticut cases, whether they agreed with the
23 usual rule that a release of one joint tort feasor
24 releases everybody.
25 MR. BAI: Well, in Connecticut the

1 release of one joint tort feasor does not, if
2 Your Honor please. However, we claim that by
3 contract if the insurance policy is going to be
4 given its clear contractual meaning, that a
5 release unauthorized does release the Company
6 because it extinguishes the legal liability of
7 the uninsured motorist.
8 THE COURT: It extinguishes your
9 subrogation to go after the man who caused the
10 accident?
11 MR. BAI: Yes.
12 THE COURT: So it is really on contract
13 and not on tort that you rely?
14 MR. BAI: Well, we rely on the contract
15 basis, Your Honor, but there is a tort basis because
16 the measure of damages in this case, if the
17 plaintiff is entitled to damages, would have been
18 the legal liability of the uninsured operator.
19 Once a release is given to the uninsured
20 operator, there is no further legal liability.
21 So even aside from the contract, the legal liability
22 having been extinguished, there would not be a
23 claim under the uninsured motorist policy. We
24 are going on both grounds really, and it is our
25 contention, Your Honor, that this becomes a matter

1
2 of law, that there is no factual dispute on it.
3 THE COURT: That is the substance of
4 your motion for a directed verdict?
5 MR. BAI: Yes, Your Honor.
6 THE COURT: Very well. Do you have
7 a similar motion?
8 [illegible]
9 THE COURT: For a directed verdict?
10 MR. GORDON: No, not a motion for
11 directed verdict, but I wish to be heard in
12 opposition to Mr. Bai's argument.
13 THE COURT: Yes. I will hear you,
14 but I was going to reserve all of this for
15 argument for Monday morning. But if you want to
16 do it now --
17 MR. GORDON: I am happy to do it now.
18 Mr. Bai's motion, as I hear him, is that having
19 released the tort feasor, Mrs. Havanich violated
20 the cooperation clause.
21 THE COURT: No. He abandons the
22 cooperation clause. He says that by releasing it
23 you pull the rug from underneath him and he can't
24 sue the person who committed all of these wrongs.
25 MR. GORDON: I say to that two things.
I say, first, he has given no proof that anything

1 would have been collected from Mr. DeCesare.

2 THE COURT: Oh, you can't tell what

3 people hide in sugar bowls and things.

4 MR. GORDON: I say further, Your Honor,

5 that this is a situation where Safeco is seeking

6 to deny a cardinal principle of law, and that is

7 that a person or a corporation may not be

8 permitted to profit from their own wrongdoing.

9 When I say this, Your Honor, it is

10 clear from the evidence and from the documents

11 in the evidence that Safeco denied coverage to

12 Mr. Miller at a very early stage in the case.

13 Having denied coverage now that denial of coverage

14 was wrongful. It was wrongful because it was

15 erroneous. There was coverage. The existence of

16 a $5000 policy elsewhere did not negate the

17 Safeco policy, but they said it did. So they

18 denied coverage, and it was wrong.

19 Now, having denied coverage and it

20 being wrongful, if based on that Mr. Miller went

21 out and he settled for $5000 --

22 THE COURT: I would say he wasn't doing

23 his job as a lawyer, but go ahead.

24 MR. GORDON: I don't understand Your

25 Honor.

1
2 THE COURT: Well, very few lawyers
3 that I know of would just put their tail between
4 their legs and run because some insurance company
5 said "Boo" to them. Would you?
6 MR. GORDON: No, Your Honor. What
7 I would do, Your Honor, is I would collect the
8 $5000 where it was readily payable, and then I
9 would go after the insurance company in litigation.
10 That might take several years as, indeed, this
11 litigation did.
12 THE COURT: Well, you do it at your
13 peril if you couldn't get your money in your
14 pocket until you had your clients sign a release.
15 MR. GORDON: Your Honor, the insurance
16 company having denied coverage cannot -- I know
17 the protective provisions of the policy, they
18 denied the coverage.
19 THE COURT: Then it's up to you to
20 force them to say "Ouch. We admit it." And
21 you have no such claim in your complaint.
22 MR. GORDON: It is not in the complaint,
23 Your Honor, because it wasn't an issue until it
24 was pleaded by the defendant, and under the
25 Federal Rules, we don't file a reply. Under
State Court rules I would have filed a reply

1 containing this. This is all in evidence and
2 Mr. Bai has not objected to these issues coming
3 in evidence. They denied coverage and under the
4 cases, Your Honor, if they deny coverage like
5 that, and then we proceed based on it, they can't
6 take advantage of their wrongful denial. They
7 were wrong in the first place, then they admitted
8 coverage, and they admitted coverage and told
9 the Insurance Commissioner they had coverage even
10 when they knew we had been paid by Fireman's Fund.
11 THE COURT: All right. Thank you.
12 Tuesday morning, 10:00 o'clock.
13
14 (Whereupon, court adjourned at
15 4:00 p.m.)
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25

OCTOBER 5, 1976
10:10 a.m.

THE COURT: The Havanich case. Did you have something more to say, Mr. Gordon?

MR. GORDON: Yes, Your Honor.

THE COURT: Why. You took time the other day when I suggested that we reserve it until today to get [illegible] arguments that you had against the defendant's motion for directed verdict. Is it more of that now?

MR. GORDON: Well, Your Honor, there are two reasons. One is that Mr. Bai, when Your Honor suggested that we might leave it until today, had already given Your Honor his arguments and I didn't feel that I wanted Your Honor to not have my arguments to mull over the week-end and have just Mr. Bai's argument.

THE COURT: I had yours. I had your argument. Now, what are we doing now.

MR. GORDON: Because Your Honor, I have further law to present, including some Connecticut authority to present on this issue, and I have a section of transcript to present to Your Honor because there are some further facts that I did not present to Your Honor. I

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1 argued this off the top of my head on Friday.
2 Perhaps it would have been wiser to wait, but
3 Your Honor heard arguments from Mr. Bai and I
4 didn't feel I had a choice.
5 THE COURT: All right. Well, I won't
6 hear any more arguments now. Thank you. I am
7 satisfied that the defendant's motion for a
8 directed verdict in its favor should be granted.
9 There was no dispute that the plaintiff executed
10 the general release in favor of Joseph DeCesare,
11 the operator of the vehicle in which Carol Ann
12 Havanich was a passenger at the time of her death.
13 Consideration was $4000 which was paid by the
14 Fireman's Fund Insurance Company on behalf of
15 Joseph DeCesare. Such a settlement forecloses
16 the plaintiff and the defendant from any suit
17 each would have against DeCesare and is also in
18 direct violation of the terms of the policy
19 which prohibits settlement without the written
20 consent of the defendant, which was not obtained.
21 Accordingly, the Clerk is directed
22 to enter judgment for the defendant, dismissing
23 the complaint on the merits. This disposition
24 makes mute the motion to amend the complaint by
25 adding an allegation to the effect that the

1 defendant's insurance policy was for uninsured
2 motorist coverage in the sum of $40,000 for two
3 vehicles; also, the issue whether the decedant
4 was a relative as defined in thepolicy and also
5 the prayer to order arbitration.
6 MR. GORDON: Your Honor, I have one
7 [illegible] for the record, if I may.
8 THE COURT: Not now, but you can do
9 it in my absence if you wish, or by letter.
10
11
12
13 (Court adjourned at 10:15 a.m.
14 and the Judge left the Bench.)
15
16
17 MR. GORDON: I will make the statement
18 for the record. It is my claim that the plaintiffs
19 have been deprived of a full and fair hearing,
20 and I emphasize the word "full" that is required
21 under the Constitution of The United States and
22 the due process clause of the Fifth Amendment.
23 I have not been given the opportunity
24 to present the authorities that I wanted to
25 present to the Court. I feel it is improper for

The Court to rule without consideration of these authorities.

MR. BAI: I would merely point out for the record that there were arguments received by Judge Murphy on both sides of the motion last Friday.

* * * *

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

ELSIE M. HAVANICH, Plaintiff	)	
	)	CIVIL ACTION NO. B-720
vs.	)	
SAFECO INSURANCE COMPANY OF AMERICA, Defendant	)	October 20, 1976

NOTICE OF APPEAL

Notice is given that Elsie M. Havanich, Plaintiff above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the order directing a verdict in favor of the Defendant and entering judgment in favor of the Defendant and from the order dismissing the action, entered in this action on the 5th and 6th days of October, 1976.

A. Reynolds Gordon
of Gordon and Hiller
Attorney for the Plaintiff,
Elsie M. Havanich
855 Main Street, Suite 945
Bridgeport, Connecticut, 06604

CERTIFICATION

This is to certify that a copy of the foregoing, NOTICE OF APPEAL has been sent this day to:
Arnold J. Bai, Esq., 10 Middle Street, Bridgeport, Connecticut, 06604.

A. Reynolds Gordon

LDS GORDON
EY AT LAW
IN STREET

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

ELSIE M. HAVANICH, Plaintiff	)	
	)	CIVIL ACTION NO. B-720
vs.	)	
SAFECO INSURANCE COMPANY OF AMERICA, Defendant	)	October 20, 1976

BOND FOR COSTS ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That we, ELSIE M. HAVANICH, ADMINISTRATRIX OF THE ESTATE OF CAROL ANN HAVANICH, as principal, and SIGMUND L. MILLER, as surety are held and firmly bound unto SAFECO INSURANCE COMPANY OF AMERICA in the full and just sum of TWO HUNDRED FIFTY ($250.00) DOLLARS to be to the said SAFECO INSURANCE COMPANY OF AMERICA, its successors, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, our successors, assigns, heirs, executors and administrators, jointly and severally by these presents. Sealed with out seals and dated this 21st day of October, 1976.

WHEREAS, on October 4th and October 6, 1976 in an action pending in the United States District Court for the District of Connecticut between ELSIE M. HAVANICH, as plaintiff, and SAFECO INSURANCE COMPANY OF AMERICA, as defendant, a judgment was rendered against the said plaintiff and said plaintiff having filed a Notice of Appeal from such judgment to the United States Court of Appeals for the Second Circuit;

NOW THEREFORE, if the said plaintiff ELSIE M. HAVANICH shall prosecute her appeal to effect and shall pay costs if the appeal is dismissed or the judgment affirmed, or such costs as the said Court of

AND HILLER
EYS AT LAW
IN STREET
PORT, CONN.

Appeals may award against he said SAFECO INSURANCE COMPANY OF AMERICA if the judgment is modified, then this obligation to be void; otherwise to remain full force and effect.

Elsie M. Havanich

ELSIE M. HAVANICH, ADMINISTRATRIX OF THE ESTATE OF CAROL ANN HAVANICH, as principal

Sigmund L. Miller

SIGMUND L. MILLER, as surety

STATE OF CONNECTICUT)
) ss: Bridgeport
COUNTY OF FAIRFIELD) October 21, 1976

Personally appeared, ELSIE M. HAVANICH, signer and sealer of the foregoing who acknowledged the same to be her free act and deed before me.

A. Reynolds Gordon

A. Reynolds Gordon, Commissioner of the Superior Court

STATE OF CONNECTICUT)
) ss: Bridgeport
COUNTY OF FAIRFIELD) October 21, 1976

Personally appeared, SIGMUND L. MILLER, signer and sealer of the foregoing who acknowledged the same to be his free act and deed before me.

A. Reynolds Gordon

A. Reynolds Gordon, Commissioner of the Superior Court

ND HILLER
YS AT LAW
N STREET
ORT. CONN

C E R T I F I C A T I O N

This is to certify that a copy of the foregoing, BOND FOR COSTS ON APPEAL, has been sent this day to:
Arnold J. Bai, Esq., 10 Middle Street, Bridgeport, Connecticut, 06604.

A. Reynolds Gordon

A. Reynolds Gordon

GORDON

STATE OF NEW YORK)
: SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 3 day of Jan., 1977 ~~1976~~ deponent served the within Appendix upon

Arnold J. Bai, esq.

attorney(s) for

appellee

in this action, at

10 Middle St., Bridgeport, Conn. 06604

the address(es) designated by said attorney(s) for that purpose by depositing _____ copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

ROBERT BAILEY

Sworn to before me, this 3 day of JAN., ~~1978~~ 1977

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978